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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

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9 BRIT FANUEL AUGBORNE, III,

Case No. 2:19-cv-01204-KJD-BNW

10 Petitioner,

ORDER

11 v.

12 BRIAN WILLIAMS, et al.,

13 Respondents.
14

15 Before the court is a motion to stay and abey Brit Fanuel Augborne, III's pro se
16 28 U.S.C. § 2254 habeas corpus petition (ECF No. 39). Respondents opposed (ECF
17 No. 41). As discussed below, the motion is denied.

18 This court may stay a petition that is either wholly unexhausted or contains both
19 exhausted and unexhausted claims if: (1) the habeas petitioner has good cause; (2) the
20 unexhausted claims are potentially meritorious; and (3) petitioner has not engaged in
21 dilatory litigation tactics. *Mena v. Long*, 813 F.3d 907, 908 (9th Cir. 2016); *Rhines v.*
22 *Weber*, 544 U.S. 269, 277 (2005); *Gonzalez v. Wong*, 667 F.3d 965, 977–80 (9th Cir.
23 2011). “[G]ood cause turns on whether the petitioner can set forth a reasonable
24 excuse, supported by sufficient evidence, to justify [the failure to exhaust a claim in
25 state court].” *Blake v. Baker*, 745 F.3d 977, 982 (9th Cir. 2014). “While a bald assertion
26 cannot amount to a showing of good cause, a reasonable excuse, supported by
27 evidence to justify a petitioner's failure to exhaust, will.” *Id.*
28

1 Augborne's petition is wholly unexhausted (see ECF No. 15). In several separate
2 orders, this court directed Augborne to choose to either (1) return to state court to
3 exhaust his unexhausted petition, in which case his federal habeas petition will be
4 denied without prejudice; or (2) file a motion asking this court to stay and abey his
5 unexhausted federal habeas petition while he returns to state court to exhaust his
6 unexhausted claims (see, e.g., ECF Nos. 15, 28, 38). The court also explained what
7 Augborne was required to show to obtain a stay. *Id.*

8 Augborne finally responded to the court's order and filed a motion to stay on May
9 13, 2021 (ECF No. 39). However, his motion simply states in one sentence that he asks
10 the court to stay and abey his unexhausted petition. It is completely unsupported; he
11 does not even attempt to demonstrate that he meets the *Rhines* factors. Accordingly,
12 the motion to stay and abey Augborne's federal habeas petition is denied.

13 **IT IS THEREFORE ORDERED** that petitioner's motion to stay and abey (ECF
14 No. 39) is **DENIED**.

15 **IT IS FURTHER ORDERED** that the petition is **DISMISSED** without prejudice as
16 unexhausted.

17 **IT IS FURTHER ORDERED** that a certificate of appealability is denied, as
18 reasonable jurists would not find the dismissal of the petition to be debatable or wrong.

19 **IT IS FURTHER ORDERED** that the Clerk enter judgment accordingly and close
20 this case.

21 DATED: 1 September 2021.



KENT J. DAWSON
UNITED STATES DISTRICT JUDGE